



STATE OF NEW MEXICO

**MAGGIE TOULOUSE OLIVER**

SECRETARY OF STATE

November 17, 2022

*Via Electronic Mail Only*

Gina Swoboda  
1901 Butterfield Rd, Ste 120  
Downers Grove, IL 60515  
[data@voterreferencefoundation.com](mailto:data@voterreferencefoundation.com)

**RE: REQUEST TO INSPECT VOTER DATA**

**Dear Ms. Swoboda:**

On October 18, 2022, you requested the following records pursuant to the National Voter Registration Act of 1993, 52 U.S.C. § 20501, *et. seq.*, and specifically 52 U.S.C. § 20507(i). This request is also being made under the New Mexico Public Records Law, NMSA 1978, §14-2-1 to – 12:

1. Voter registration data for all voters, including each voter's classification or status (e.g., active, inactive, suspended, canceled, purged, etc.), down to the lowest geopolitical subdivision available (precinct, municipality, town, county, etc.), as it exists on November 8, 2022, or as close to this date as possible;
2. Records reflecting the total ballots cast, statewide, in the November 8, 2022, general election;
3. Voter registration data for all voters removed or canceled from any voter list (e.g. active list, inactive list, suspended list, purged list, deleted list, etc.) between September 24, 2022 and December 15, 2022;
4. Voting history/credit data for each voter that voted in items 1-3 for the November 8, 2022, general election, including the method of voting (election day polling place, absentee, early, etc.), and the voting jurisdiction the vote occurred in, down to the lowest geopolitical subdivision available (precinct, municipality, town, county, etc.); and
5. The unique voter ID or key identifier of each voter that voted in the November 8, 2022, general election

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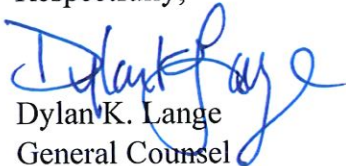
To begin with, request number 3, is a request for future data that does not/did not exist at the time of your request and we cannot fulfil requests in perpetuity. Additionally, the only request you have made that is not for voter data is request number 2. This information is located on our website at: <https://electionresults.sos.state.nm.us/default.aspx>. There is a drop-down option on the left-hand side that will lead you to the specific records you seek. These are not official results until they are certified.

Additionally, we will refrain from producing any responsive voter data maintained by our office at this time due to numerous issues further detailed below. To begin with this decision is motivated by the fact that you will post any voter data provided on your website, which our office believes is a violation of law. You have not indicated that you will not post any voter data online, and based on your past practice, we believe you will do so again. Finally, on November 10, 2022, we filed a Motion to Stay the Preliminary Injection Pending Appeal, in Appellate Case 22-2101, and do not think it is appropriate to produce voter data until the Court has ruled on the motion.

To further clarify another point, you have not complied with NMSA 1978 Section 1-4-5.5 in requesting voter data, by not submitting the required affidavit. The New Mexico District Court, in its Memorandum and Order stated that "the State may prohibit requesters from posting voter data online without violating the First Amendment, because there is no right of access to government data." *VoterRef v. Balderas*, 2:2-0222 at 194. Therefore, in accordance with the Court Order and New Mexico state law, an affidavit for any production of voter data is required. To this end, we want to clarify that requests for voter data under state law are not governed by the Inspection of Public Records Act, rather they are specifically governed by Election Code. Section 1-4-5.5 of the Election Code requires an affidavit to be completed before voter data is provided.

Therefore, due to the nature of your request, the ongoing litigation, your past practice of posting this data online, and the fact that such a request is not accompanied by the required affidavit, our office is unable to process your request at this time. We of course will comply with any court order in the case relating to the production of records or otherwise.

Respectfully,

  
Dylan K. Lange  
General Counsel